



January 16, 2004

## SENATE BILL No. 139

DIGEST OF SB 139 (Updated January 13, 2004 1:40 pm - DI 106)

**Citations Affected:** IC 11-12; IC 12-23; IC 35-50; noncode.

**Synopsis:** Forensic diversion program. Repeals the forensic diversion program. Requires the forensic diversion study committee to study community based treatment instead of incarceration for offenders who have a mental illness or an addictive disorder.

**Effective:** July 1, 2004.

**Long, Bray**

January 6, 2004, read first time and referred to Committee on Criminal, Civil and Public Policy.  
January 15, 2004, reported favorably — Do Pass.

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SB 139—LS 6496/DI 105+



January 16, 2004

Second Regular Session 113th General Assembly (2004)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2003 Regular Session of the General Assembly.

## SENATE BILL No. 139

A BILL FOR AN ACT to amend the Indiana Code concerning corrections.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 11-12-2-3, AS AMENDED BY P.L.224-2003,  
2 SECTION 123, IS AMENDED TO READ AS FOLLOWS  
3 [EFFECTIVE JULY 1, 2004]: Sec. 3. (a) A community corrections  
4 advisory board shall:

5 (1) formulate

6 ~~(A)~~ the community corrections plan and the application for  
7 financial aid required by section 4 of this chapter; ~~and~~

8 ~~(B) the forensic diversion program plan under IC 11-12-3.5-2;~~

9 (2) observe and coordinate community corrections programs in  
10 the county;

11 (3) make an annual report to the county fiscal body, county  
12 executive, or, in a county having a consolidated city, the  
13 city-county council, containing an evaluation of the effectiveness  
14 of programs receiving financial aid under this chapter and  
15 recommendations for improvement, modification, or  
16 discontinuance of these programs;

17 (4) ensure that programs receiving financial aid under this chapter

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1 comply with the standards adopted by the department under  
2 section 5 of this chapter; and

3 (5) recommend to the county executive or, in a county having a  
4 consolidated city, to the city-county council, the approval or  
5 disapproval of contracts with units of local government or  
6 nongovernmental agencies that desire to participate in the  
7 community corrections plan.

8 Before recommending approval of a contract, the advisory board must  
9 determine that a program is capable of meeting the standards adopted  
10 by the department under section 5 of this chapter.

11 (b) A community corrections advisory board shall do the following:

12 (1) Adopt bylaws for the conduct of its own business.

13 (2) Hold a regular meeting at least one (1) time every three (3)  
14 months and at other times as needed to conduct all necessary  
15 business. Dates of regular meetings shall be established at the first  
16 meeting of each year.

17 (3) Comply with the public meeting and notice requirements  
18 under IC 5-14-1.5.

19 (c) A community corrections advisory board may contain an office  
20 as designated by the county executive or, in a county having a  
21 consolidated city, by the city-county council.

22 SECTION 2. IC 12-23-5-1, AS AMENDED BY P.L.224-2003,  
23 SECTION 125, IS AMENDED TO READ AS FOLLOWS  
24 [EFFECTIVE JULY 1, 2004]: Sec. 1. ~~(a)~~ In a criminal proceeding for  
25 a misdemeanor or infraction in which:

26 (1) the use or abuse of alcohol, drugs, or harmful substances is a  
27 contributing factor or a material element of the offense; or

28 (2) the defendant's mental illness other than substance abuse, is  
29 a contributing factor;

30 the court may take judicial notice of the fact that proper early  
31 intervention, medical, advisory, or rehabilitative treatment of the  
32 defendant is likely to decrease the defendant's tendency to engage in  
33 antisocial behavior.

34 ~~(b) For purposes of IC 11-12-3.5, in a criminal proceeding in which:~~

35 ~~(1) the use or abuse of alcohol, drugs, or harmful substances is a~~  
36 ~~contributing factor or a material element of the offense; or~~

37 ~~(2) the defendant's mental illness other than substance abuse, is~~  
38 ~~a contributing factor;~~

39 ~~the court shall take judicial notice of the fact that proper early~~  
40 ~~intervention, medical, advisory, or rehabilitative treatment of the~~  
41 ~~defendant is likely to decrease the defendant's tendency to engage in~~  
42 ~~antisocial behavior.~~

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SECTION 3. IC 35-50-2-2, AS AMENDED BY P.L.224-2003,  
SECTION 126, IS AMENDED TO READ AS FOLLOWS  
[EFFECTIVE JULY 1, 2004]: Sec. 2. (a) The court may suspend any  
part of a sentence for a felony, except as provided in this section or in  
section 2.1 of this chapter.

(b) With respect to the following crimes listed in this subsection, the  
court may suspend only that part of the sentence that is in excess of the  
minimum sentence: ~~unless the court has approved placement of the  
offender in a forensic diversion program under IC 11-12-3.5:~~

(1) The crime committed was a Class A or Class B felony and the  
person has a prior unrelated felony conviction.

(2) The crime committed was a Class C felony and less than seven  
(7) years have elapsed between the date the person was  
discharged from probation, imprisonment, or parole, whichever  
is later, for a prior unrelated felony conviction and the date the  
person committed the Class C felony for which the person is  
being sentenced.

(3) The crime committed was a Class D felony and less than three  
(3) years have elapsed between the date the person was  
discharged from probation, imprisonment, or parole, whichever  
is later, for a prior unrelated felony conviction and the date the  
person committed the Class D felony for which the person is  
being sentenced. However, the court may suspend the minimum  
sentence for the crime only if the court orders home detention  
under IC 35-38-1-21 or IC 35-38-2.5-5 instead of the minimum  
sentence specified for the crime under this chapter.

(4) The felony committed was:

(A) murder (IC 35-42-1-1);

(B) battery (IC 35-42-2-1) with a deadly weapon or battery  
causing death;

(C) sexual battery (IC 35-42-4-8) with a deadly weapon;

(D) kidnapping (IC 35-42-3-2);

(E) confinement (IC 35-42-3-3) with a deadly weapon;

(F) rape (IC 35-42-4-1) as a Class A felony;

(G) criminal deviate conduct (IC 35-42-4-2) as a Class A  
felony;

(H) child molesting (IC 35-42-4-3) as a Class A or Class B  
felony;

(I) robbery (IC 35-42-5-1) resulting in serious bodily injury or  
with a deadly weapon;

(J) arson (IC 35-43-1-1) for hire or resulting in serious bodily  
injury;

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- 1 (K) burglary (IC 35-43-2-1) resulting in serious bodily injury  
 2 or with a deadly weapon;  
 3 (L) resisting law enforcement (IC 35-44-3-3) with a deadly  
 4 weapon;  
 5 (M) escape (IC 35-44-3-5) with a deadly weapon;  
 6 (N) rioting (IC 35-45-1-2) with a deadly weapon;  
 7 (O) dealing in cocaine, a narcotic drug, or methamphetamine  
 8 (IC 35-48-4-1) if the court finds the person possessed a firearm  
 9 (as defined in IC 35-47-1-5) at the time of the offense, or the  
 10 person delivered or intended to deliver to a person under  
 11 eighteen (18) years of age at least three (3) years junior to the  
 12 person and was on a school bus or within one thousand (1,000)  
 13 feet of:  
 14 (i) school property;  
 15 (ii) a public park;  
 16 (iii) a family housing complex; or  
 17 (iv) a youth program center;  
 18 (P) dealing in a schedule I, II, or III controlled substance  
 19 (IC 35-48-4-2) if the court finds the person possessed a firearm  
 20 (as defined in IC 35-47-1-5) at the time of the offense, or the  
 21 person delivered or intended to deliver to a person under  
 22 eighteen (18) years of age at least three (3) years junior to the  
 23 person and was on a school bus or within one thousand (1,000)  
 24 feet of:  
 25 (i) school property;  
 26 (ii) a public park;  
 27 (iii) a family housing complex; or  
 28 (iv) a youth program center;  
 29 (Q) an offense under IC 9-30-5 (operating a vehicle while  
 30 intoxicated) and the person who committed the offense has  
 31 accumulated at least two (2) prior unrelated convictions under  
 32 IC 9-30-5; or  
 33 (R) aggravated battery (IC 35-42-2-1.5).  
 34 (c) Except as provided in subsection (e), whenever the court  
 35 suspends a sentence for a felony, it shall place the person on probation  
 36 under IC 35-38-2 for a fixed period to end not later than the date that  
 37 the maximum sentence that may be imposed for the felony will expire.  
 38 (d) The minimum sentence for a person convicted of voluntary  
 39 manslaughter may not be suspended unless the court finds at the  
 40 sentencing hearing that the crime was not committed by means of a  
 41 deadly weapon.  
 42 (e) Whenever the court suspends that part of an offender's (as

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defined in IC 5-2-12-4) sentence that is suspendible under subsection (b), the court shall place the offender on probation under IC 35-38-2 for not more than ten (10) years.

(f) An additional term of imprisonment imposed under IC 35-50-2-11 may not be suspended.

(g) A term of imprisonment imposed under IC 35-47-10-6 or IC 35-47-10-7 may not be suspended if the commission of the offense was knowing or intentional.

(h) A term of imprisonment imposed for an offense under IC 35-48-4-6(b)(1)(B) may not be suspended.

SECTION 4. IC 11-12-3.5 IS REPEALED [EFFECTIVE JULY 1, 2004].

SECTION 5. [EFFECTIVE JULY 1, 2004] (a) As used in this SECTION, "committee" refers to the forensic diversion study committee established by subsection (c).

(b) As used in this SECTION, "forensic diversion program" means a community based program or service that is an alternative to incarceration for persons who:

- (1) have a mental illness or an addictive disorder; and
- (2) are convicted of a crime that does not involve serious bodily injury.

(c) There is established the forensic diversion study committee. The committee shall study the:

- (1) circumstances, if any, under which a forensic diversion program is appropriate; and
- (2) implementation, if appropriate under subdivision (1), of a forensic diversion program;

as part of the criminal sentencing structure.

(d) The committee consists of fifteen (15) members appointed as follows:

- (1) Two (2) members of the senate, who may not be affiliated with the same political party, to be appointed by the president pro tempore of the senate.
- (2) Two (2) members of the house of representatives, who may not be affiliated with the same political party, to be appointed by the speaker of the house of representatives.
- (3) The chief justice of the supreme court or the chief justice's designee.
- (4) The commissioner of the department of correction or the commissioner's designee.
- (5) The director of the Indiana criminal justice institute or the director's designee.

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(6) The executive director of the prosecuting attorneys council of Indiana or the executive director's designee.

(7) The executive director of the public defender of Indiana council or the executive director's designee.

(8) One (1) person with experience in administering community corrections programs appointed by the governor.

(9) One (1) person with experience in administering probation programs appointed by the governor.

(10) Two (2) persons with experience in treating mental illness or addictive disorders to be appointed by the governor.

(11) Two (2) judges who exercise criminal jurisdiction, who may not be affiliated with the same political party, to be appointed by the governor.

(e) The chairman of the legislative council shall appoint a legislative member of the committee to serve as chair of the committee. Whenever there is a new chairman of the legislative council, the new chairman of the legislative council may remove the chair of the committee and appoint another chair.

(f) If a legislative member of the committee ceases to be a member of the chamber from which the member was appointed, the member also ceases to be a member of the committee.

(g) A legislative member of the committee may be removed at any time by the authority who appointed the legislative member.

(h) If a vacancy exists on the committee, the authority who appointed the former member whose position is vacant shall appoint an individual to fill the vacancy.

(i) The committee shall submit a final report of its study to the legislative council before November 1, 2005.

(j) The Indiana criminal justice institute shall provide staff support to the committee.

(k) Each member of the committee is entitled to receive the same per diem, mileage, and travel allowances paid to individuals who serve as legislative and lay members, respectively, of interim study committees established by the legislative council.

(l) The affirmative votes of a majority of the members appointed to the committee are required for the committee to take action on any measure, including the final report.

(m) The committee:

(1) shall meet at the call of the chair; and

(2) may meet at any time before October 15, 2005.

(n) Except as otherwise specifically provided by this act, the committee shall operate under the rules of the legislative council.

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- 1     **All funds necessary to carry out this SECTION shall be paid from**
- 2     **appropriations to the legislative council and legislative services**
- 3     **agency.**
- 4     **(o) This SECTION expires December 31, 2005.**

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## COMMITTEE REPORT

Madam President: The Senate Committee on Criminal, Civil and Public Policy, to which was referred Senate Bill No. 139, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is made to Senate Bill 139 as introduced.)

LONG, Chairperson

Committee Vote: Yeas 7, Nays 3.

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